

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AUSTREBERTO D. MALDONADO) Case No. CV 08-05923 VAP-(JC)
Petitioner,) ORDER ACCEPTING FINDINGS,
v.) CONCLUSIONS, AND
KENNTH [sic] CLARK, Warden,) RECOMMENDATIONS OF
) UNITED STATES MAGISTRATE
Respondent.) JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition for Writ of Habeas Corpus by a Person in State Custody (the “Petition”) and all of the records herein, including the attached Report and Recommendation of United States Magistrate Judge (“Report and Recommendation”) and petitioner’s objections to the Report and Recommendation.¹ The Court has further made a *de novo*

///

¹The record reviewed includes the color copy of the photospread including petitioner’s photograph, as challenged in Ground One of the Petition and included in the record by minute order dated October 27, 2011. This exhibit does not alter the Court’s analysis of Ground One. As explained in the Report and Recommendation, the victim’s identification of petitioner was sufficiently reliable.

1 determination of those portions of the Report and Recommendation to which
2 objection is made.²

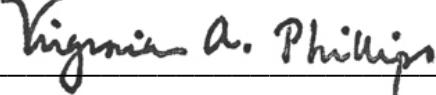
3 The Court approves and accepts the Report and Recommendation.

4 IT IS ORDERED that Judgment be entered denying the Petition and
5 dismissing this action with prejudice.

6 IT IS FURTHER ORDERED that the Clerk serve copies of this Order, the
7 Report and Recommendation, and the Judgment herein on petitioner and on
8 counsel for respondent.

9 LET JUDGMENT BE ENTERED ACCORDINGLY.

10
11 DATED: November 6, 2011

12 
13

14 HONORABLE VIRGINIA A. PHILLIPS
15 UNITED STATES DISTRICT JUDGE
16
17
18
19

20 ²To the extent the Objections raise new evidence and arguments not raised in the Petition,
21 this Court, in an exercise of its discretion, declines to consider them. See United States v.
Howell, 231 F.3d 615, 621 (9th Cir. 2000), cert. denied, 534 U.S. 831 (2001). For example,
22 although petitioner's first ground for relief in the Petition is that a photospread was unduly
23 suggestive based on the reddish tint to his photograph, petitioner's Objections more broadly
24 argue that the photospread was unduly suggestive based on additional factors. (Objections at
25 3-7). The Report and Recommendation declined to consider such broader claim which petitioner
26 also attempted to assert in his Traverse, because a Traverse is also not an appropriate pleading in
27 which to raise additional grounds for relief. See Report and Recommendation at 10 n.7 (also
limiting review of Ground One to arguments raised in the Petition). In any event, this Court, like
the Magistrate Judge, agrees with the California Court of Appeal's determination that such
broader claim lacks merit. See id.